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# PELATIAH WEBSTER AND THE CONSTITUTION

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## AN ARTICLE

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## PELATIAH WEBSTER AND THE CONSTITUTION.

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In an article in the North American Review for August, 1907, in a memorial presented to Congress in May, 1908, and printed by its order, in his recent book, *The Origin and Growth of the American Constitution*, and in several newspaper communications, Mr. Hannis Taylor has announced the discovery that Pelatiah Webster, a pamphleteer of the Revolutionary period, was the true designer or architect of the Constitution of the United States, having previously proposed the convention which constructed it. The claim must be treated seriously because of the importance of the subject and because Congress has given it currency by publishing it.

In the North American Review article Mr. Taylor says:

He [Webster] it was who first proposed in a public way the calling of the convention in which the present Constitution was made.

Again:

It is beyond question that Pelatiah Webster, in his financial essay of 1781, made the first public call for a convention to create an adequate system of federal government.

In the memorial he adds:

Having thus taken the first step, he set himself to work to formulate in advance such an adequate system as the convention should adopt whenever it might meet.

The "adequate system" was formulated in a pamphlet issued in 1783, which derives much of its force, according to Mr. Taylor, from the pamphlet of 1781, which paved the way for it.

### I.

Mr. Taylor's authority for stating that Webster proposed a Continental convention in 1781 is the following paragraph by James Madison in his sketch of the origin of the convention, first printed in 1840 as an introduction to the *Madison Papers*, edited by Henry D. Gilpin:

In a pamphlet published in May, 81, at the seat of Congs. Pelatiah Webster, an able tho not conspicuous Citizen, after discussing the fiscal system of the U. States, and suggesting among other remedial provisions including [a] national Bank, remarks that "the Authority of Congs. at present is very inadequate to the performance of their duties; and this indicates the necessity of their calling a Continental Convention for the express purpose of ascertaining, defining, enlarging, and limiting, the duties & powers of their Constitution."

Madison further states, in the same sketch, that on April 1, 1783, in Congress, Alexander Hamilton said he wished to see a general convention called and would make a motion for that purpose in view of the recommendation of the New York Legislature; and Madison cites as his authority the *Life of Schuyler in Longacre* (Madison's Writings, Hunt, Ed. II, 401, 402). The citation is incorrect, however, the action of the New York Legislature being given in the sketch of Hamilton in *Longacre* (National Portrait Gallery, Vol. II).



So is his statement of the authorship of the pamphlet of 1781 incorrect, for it was written by William Barton, and not by Pelatiah Webster. The title is, "Observations on the Nature and Use of Paper Credit," and it was "printed and sold by Thomas Aitken, at Pope's Head, three doors above the Coffee House." All libraries which have it attribute it to Barton, and it appears under his name in Hildebrun's *Issues of the Philadelphia Press, 1685-1784*. Our interest, however, is not in knowing who wrote it, but who did not write it, and the proof that Pelatiah Webster was not the author is overwhelming. It is written in a flowing, scholarly style, and every principle advanced is supported by quotations from contemporaneous economic authorities, whereas Webster never quotes, and his simple, homely diction shows in every line the practical and shrewd mind of a man who studies his subject untrammelled by books. Webster reprinted most of his papers in 1791 and did not include this one among them. His essays are on kindred subjects; they follow one another in orderly array, and they refer to one another. That he should have written this essay and not spoken of it in some other essay is highly improbable. Moreover, he did not agree with the main proposition advanced in the pamphlet. It urged the establishment of a national bank, the funds to be raised by a lottery, to be immediately governed by 50 men chosen by Congress and to be controlled by a committee composed of one member named by each State. One searches in vain for an allusion to such a scheme in Webster's essays. In only one does he discuss banks—that of February 10, 1786, on "Credit; in which the Doctrine of Banks is Considered." Here he says a State or national bank "would tend immediately and directly to tyranny in the Government, because it would give the minister or ruler the command of a vast sum of money," and suggests that a State and private bank might be combined. His ideas do not remotely resemble those set forth in the pamphlet of 1781. It can be asserted with positiveness that no unbiased mind can read Webster's pamphlets and this pamphlet without being certain that Webster did not write it. Madison's sketch in which the error of attributing the pamphlet to Webster occurred was written by him in extreme old age, and was not one of the papers which he prepared for posthumous publication. It is an exceedingly rough draft, was never revised, and was indorsed by him, "a sketch never finished nor applied." (*Writings*, II, 391.) He remembered only in a general way the subjects on which Webster had written, more than 50 years had passed, and, finding the pamphlet on Paper Credit in his collection, he erroneously attributed it to Webster.

It is not so easy to understand how Mr. Taylor followed this error and used it as part of the foundation on which he builds his panegyric of Webster. In his article in the *North American Review* and in his memorial he quotes, from George Bancroft's *History of the Constitution*, the remarks on Webster's pamphlet of 1783, which occur on page 86 of Volume I; but he ignores Bancroft's remarks on the pamphlet of 1781 made on page 23 of the same volume, where Bancroft says:

In a pamphlet dated the 24th [of May, 1781] and dedicated to the Congress of the United States of America and to the Assembly of Pennsylvania, William Barton insisted [and so forth, as in Madison's quotation].



In a footnote on the same page Bancroft adds:

Not by Pelatiah Webster, as stated by Madison. \* \* \* First, at a later period Webster collected his pamphlets in a volume, and this one is not among them, a disclaimer which under the circumstances is conclusive. Secondly, the style of this pamphlet of 1781 is totally unlike the style of those collected by Pelatiah Webster. My friend, F. D. Stone, of Philadelphia, was good enough to communicate to me the bill for printing the pamphlet. It was made out against William Barton and paid by him. Further, Barton from time to time wrote pamphlets, of which, on a careful comparison, the style, language, and forms of expression are found to correspond to this pamphlet published in 1781. Without doubt it was written by William Barton.

Mr. Taylor does not completely ignore this statement in his book, however. Here he welds the pamphlets of 1781 and 1783 together more strongly than ever, so that when one falls the other must have a precarious standing, and in a note (p. 27) dismisses Bancroft thus:

No attention should be paid to Bancroft's vain attempt to discredit Madison's statement. (History of the Constitution, I, 24, Note 3.) Apart from Madison's great accuracy and Bancroft's well-known inaccuracy stands the fact that the call of 1781 was a natural part of Pelatiah Webster's initiative as now understood. Madison was on the ground and knew the facts; Bancroft's inference is based on flimsy hearsay nearly a century after the event. Bancroft never grasped the importance of Webster's work.

The logic of this remark is that the pamphlet of 1781 must have been written by Webster, in order to sustain the theory of long premeditation for the pamphlet of 1783. Mr. Taylor will find it hard, however, to make any one agree with him in thinking that a circumstantial averment like Bancroft's can properly be dismissed as an inference based on hearsay.

## II.

After the primacy claimed for him in calling for a convention, it is in order to examine the weakened claim that Webster designed the plan which the convention adopted, but space limitations make it necessary to deal with only two or three points. They are, however, the strongest that can be brought forward for the claim. The pamphlet in which the plan was given to the world is entitled "A Dissertation on the Political Union and Constitution of the Thirteen United States of North America." It was first published in 1783 and reprinted in Webster's collective pamphlets in 1791. It contains only two features which also appear in the Constitution—the power of Federal taxation and the bicameral legislature—and there were no two principles of government better understood in the States at the time Webster wrote than these. The one had been discussed in and out of Congress for years; the other was an accepted policy in the States from the time of the Declaration of Independence. Lack of Federal power to tax without State intermediation was universally recognized as the great cause of the inefficiency of the confederation. As Madison said:

But the radical infirmity of the Articles of Confederation was the dependence of Congress on the voluntary and simultaneous compliance with its requisitions by so many independent communities, each consulting more or less its particular interests and convenience and distrusting the compliance of the others. (Writings, II, 395.)

On February 3, 1781, Congress asked the States to vest power in it to levy a duty of 5 per cent on imports. On the same day the resolution was printed as a broadside and passed on to the street.



The taxing power was much debated in the convention of 1787, and, finally, emerged with restrictions. There were half a dozen members of the convention who had been Members of the Congress of 1781, and nearly all the Members had been in other Congresses, where the subject of Federal taxation had been discussed before and after Webster wrote.

A bicameral legislature was proposed in the Virginia plan, presented to the convention as soon as it had a quorum, and two days later agreed to without dissent, except from Pennsylvania, which was the only State that did not have a legislature of two chambers. Edmund Randolph explained to the convention on May 31 that the object was to guard against "the turbulence and follies of democracy." On June 7, John Dickinson said he wished the Senate to bear as strong a likeness as possible to the British House of Lords. We need look no further for the convention's reasons in agreeing at once to a legislature of two chambers.

#### IV.

Webster deliberately omitted from his plan recommendation of a Federal judiciary, and so far as we can judge from his writings had no conception of such a one as the Constitution provided for. Here it is my duty to call attention to a carelessness of quotation and statement on Mr. Taylor's part of so grave a character that it has given an entirely incorrect idea of Webster's meaning. In his North American Review article he gives what purports to be a connected quotation of a passage from Webster's pamphlet, but a sentence has been interjected in it from a different part of the pamphlet, a vital word has been changed in the most important sentence and from this sentence a qualifying clause has been omitted. The Review article does not, of course, print Webster's pamphlet, which the reader would have to consult to detect these errors and the pamphlet was not then readily accessible. Following is the passage as quoted in the Review, italics indicating the misleading portions:

These ministers [of state] will of course have the best information and most perfect knowledge of the state of the Nation as far as it relates to their several departments and will, of course, be able to give the best information to Congress in what manner any bill proposed will affect the public interest in their several departments, which will nearly comprehend the whole. The Financier manages the whole subject of revenues and expenditures; the Secretary of State takes knowledge of the general policy and internal government; the Minister of War presides in the whole business of war and defense; and the Minister of Foreign Affairs regards the whole state of the Nation as it stands related to or connected with all foreign powers. *To these I should add judges of law and chancery. I would further propose that the aforesaid great ministers of state shall compose a council of state, to whose number Congress may add three others, viz, one from New England, one from the Middle States, and one from the Southern States, one of which is to be appointed President by Congress.* (Vol. 185, p. 820.)

There is nothing here to indicate what is the fact, that after the sentence describing the duties of the ministers, a whole paragraph about the Secretary of State has been omitted; but that is not important. The sentence about judges of law and chancery has been changed by substituting the word "should" for "would" and by leaving off half of the original sentence, and the sentence which follows had nothing to do with this part of the argument, but has been inserted from a different part of the pamphlet.



What Webster really said, after speaking of the ministers, was (*italics marking the variation from the passage given by Mr. Taylor*):

To these [*i. e.*, the ministers of state] I *would* add judges of law and chancery; *but I fear they will not be very soon appointed—the one supposes the existence of law, and the other of equity—and when we shall be altogether convinced of the absolute necessity of the real and effectual existence of both these we shall probably appoint proper heads to preside in those departments; I would therefore propose,*

3. *That when any bill shall pass the second reading in the House in which it originates, and before it shall be finally enacted, copies of it shall be sent to each of the said ministers of state, in being at the time, who shall give said House in writing the fullest information in their power, etc.* (Edition of 1791, p. 214.)

Seven pages further on in the pamphlet, as the sixth of his main propositions, occurs the sentence about the ministers of state, “I would further propose that the aforesaid great ministers,” etc. The plain truth is that Mr. Taylor has made Webster propose a Federal judiciary when he did not do so.

## V.

In his memorial which precedes the reprint of the pamphlet, and in his book, Mr. Taylor treats this part of Webster’s plan somewhat differently but hardly less recklessly. There he connects Webster’s statement that “the supreme authority” should be vested with power to decide controversies between States with the “judges of law and chancery,” and finds the entire judicial system distinctly outlined (p. 18 of the memorial); but Webster’s “supreme authority” was nothing but Congress, and he meant to continue in it the authority which it already had with reference to controversies between States. He gave it similar authority when he provided that anyone who should disobey the “supreme authority” should be “summoned and compelled to appear before Congress.”

## VI.

Not only did Webster have no discernible part in framing the Constitution, but he did not understand it after it was framed. His own plan had kept all power in Congress, as it was under the old Government, and he did not grasp the fact that coordinate and coequal branches had been erected beside Congress. He seems to have thought that the President was a third house. In his essay, published October 12, 1787, in reply to the address against the Constitution issued by 16 members of the Assembly of Pennsylvania, he says:

2. Their next objection is against a *legislature consisting of three branches*. This is so far from an objection that I consider it an advantage. The most weighty and important affairs of the Union must be transacted in Congress; the most essential counsels must be there decided, *which must all go thro’ three several discussions in three different chambers*. \* \* \* At any rate I think it very plain that our chance of a right decision in a *Congress of three branches* is much greater than in one of a single chamber. (Edition of 1791, pp. 404, 405.)

An impartial reading of his essay, *The Weakness of Brutus Exposed*, published November 4, 1787, and on the *Seat of Federal Government*, published September 21, 1789, shows that he had not yet shaken off the habit of thinking of the Federal Government as simply and solely Congress.

I disclaim any wish to detract from the merit of Pelatiah Webster, who was a sound thinker and a patriotic man. Undoubtedly, by his essays on financial subjects, he influenced his time in favor of a stronger central government. Probably his essay on the Federal Union had a general influence in the same direction, although few of the propositions he advanced found a place in the Constitution and none because he had made them, and his plan, as a whole, was completely ignored.

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WASHINGTON, D. C.

